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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
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4 REGENXBIO INC. and THE TRUSTEES }
5 OF THE UNIVERSITY OF }
6 PENNSYLVANIA, }
7 Plaintiffs, } C.A. No. 20-1226-RGA
8 v. }
9 SAREPTA THERAPEUTICS, INC. and }
10 SAREPTA THERAPEUTICS THREE, }
11 LLC, }
12 Defendants. }
13
14 J. Caleb Boggs Courthouse
15 844 North King Street
16 Wilmington, Delaware
17
18 Tuesday, May 2, 2023
19 3:00 p.m.
20 Discovery Dispute Conference
21
22 BEFORE: THE HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.
23
24 APPEARANCES:
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26 FISH & RICHARDSON
27 BY: SUSAN MORRISON, ESQUIRE
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29 For the Plaintiff
30
31 MORRIS NICHOLS ARSHT & TUNNELL LLP
32 BY: DEREK FAHNESTOCK, ESQUIRE
33
34 -and-
35
36 QUINN EMANUEL URQUHART & SULLIVAN
37 BY: ANASTASIA M. FERNANDS, ESQUIRE
38
39 For the Defendant

02:51:58

03:03:36 1 Ms. Morrison to sort of tell me where she thought some of
03:03:43 2 the good information might be, and I would see if it was
03:03:46 3 there.
03:03:48 4 So, as I understand it, the notes I made to
03:03:58 5 myself here was that the Plaintiff's theory is that this
03:04:03 6 agreement was relevant to the safe harbor and to damages.
03:04:18 7 And as I sort of understood it, I think the response of the
03:04:24 8 Defendant here was, We provided you with all the information
03:04:30 9 about all of the SRP-9001 that we made.
03:04:45 10 Is that right, Ms. Morrison?
03:04:47 11 MS. MORRISON: I'm sorry, Your Honor. Is it --
03:04:50 12 THE COURT: No, that's all right. You can stand
03:04:52 13 there for a second.
03:04:55 14 Basically, has the Defendant provided you,
03:04:57 15 Here's all the times we made SRP-9001 in the United States
03:05:03 16 and presumably what we have done with it?
03:05:05 17 MS. MORRISON: So, that is -- I believe it's not
03:05:08 18 a hundred percent correct, Your Honor. We still are having
03:05:11 19 a discussion about some batch records. I'm not the closest
03:05:14 20 to that issue on my team, but I believe there's still
03:05:17 21 discussion going on about whether there are some missing
03:05:19 22 batch records and whether we actually have all that
03:05:24 23 information, but that's -- so, I think that's still up for
03:05:29 24 debate. But I think the parties are working on that piece
03:05:31 25 of it in terms of whether we have everything.

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02:51:58 1 *** PROCEEDINGS ***
03:01:03 2 DEPUTY CLERK: All rise. Court is now in
03:02:31 3 session. The Honorable Richard G. Andrews presiding.
03:02:31 4 THE COURT: All right. Good afternoon. Please
03:02:33 5 be seated.
03:02:36 6 We're here in the *Trustee of the University of*
03:02:42 7 *Pennsylvania, et al. vs. Sarepta*.
03:02:45 8 Ms. Morrison, your client, how do you pronounce
03:02:50 9 their name?
03:02:51 10 MS. MORRISON: It's Regenxbio.
03:02:53 11 THE COURT: Regenxbio?
03:02:54 12 MS. MORRISON: Regenxbio.
03:02:55 13 THE COURT: Oh, okay.
03:02:56 14 All right. All right.
03:02:59 15 So, and I see Ms. Morrison there.
03:03:01 16 And Mr. Fahnestock; right?
03:03:06 17 And presumably, you are -- I'm not sure about
03:03:09 18 his handwriting. You are?
03:03:12 19 MS. FERNANDS: Ms. Fernands.
03:03:15 20 THE COURT: Ms. Fernands?
03:03:17 21 MS. FERNANDS: Yes.
03:03:17 22 THE COURT: So, okay. So, I read your letters,
03:03:19 23 and I asked the Defendant to bring along two unredacted
03:03:29 24 versions and two redacted versions.
03:03:32 25 And so, what I had in mind doing was asking

03:05:34 1 MS. FERNANDS: What we have and we've
03:05:36 2 represented to Plaintiffs many times is we have produced a
03:05:41 3 spreadsheet of all batches of SRP-9001 drug product produced
03:05:46 4 prior to the expiration of the patent in November of 2012.
03:05:50 5 As Ms. Morrison has indicated, there are some
03:05:53 6 batch records related to -- they have the spreadsheet of all
03:05:56 7 final product produced. There are some batch records that
03:06:00 8 the manufacturer has not released yet, so my client doesn't
03:06:04 9 have them yet. And we represented that we'll provide those
03:06:08 10 backup batch records as we receive them, but they have the
03:06:10 11 spreadsheet of everything that has been made as of the
03:06:12 12 expiration of the patent.
03:06:14 13 THE COURT: And so, the stuff that was made as
03:06:16 14 of the expiration of the patent, Ms. Fernands, what happened
03:06:27 15 to that stuff?
03:06:28 16 MS. FERNANDS: [REDACTED]
03:06:32 17 [REDACTED]
03:06:34 18 [REDACTED] there has been no approval yet. The BLA has
03:06:37 19 been submitted and not approved. There's no commercial
03:06:41 20 approval. And so, there are ongoing clinical trials, but,
03:06:47 21 [REDACTED]
03:06:48 22 THE COURT: And so, they're sitting there two
03:06:51 23 years, or I forget what the date was that you said that the
03:06:53 24 patent expired, but maybe not two years, but a decent chunk
03:06:57 25 of time after the patent expired. It's just sitting there.

03:07:06 1 None of it has ever been sent to Europe, or Japan or some
 03:07:10 2 other place outside the United States?
 03:07:12 3 MS. FERNANDS: I don't believe that there have
 03:07:16 4 been -- [REDACTED], and I believe there's
 03:07:20 5 been some limited discovery, you know, emails as to that.
 03:07:24 6 But as far as the clinical trials, those were all run by
 03:07:27 7 Sarepta, and that information would be with Sarepta, to the
 03:07:32 8 extent it's being used for clinicals. [REDACTED]
 03:07:37 9 [REDACTED]
 03:07:42 10 [REDACTED]
 03:07:47 11 [REDACTED]
 03:07:52 12 [REDACTED]
 03:07:53 13 And so, I don't want to misrepresent that
 03:07:56 14 nothing's been sent, but there's a trial called the 301
 03:07:59 15 trial that Sarepta is running that I believe is a global
 03:08:02 16 trial, but it's a Sarepta trial for FDA submission.
 03:08:06 17 THE COURT: Well, so maybe a slightly different
 03:08:09 18 way of asking the same question is essentially: Can you
 03:08:12 19 account for all the product that has been made?
 03:08:14 20 MS. FERNANDS: I think I can account for -- I
 03:08:23 21 don't --
 03:08:23 22 THE COURT: And when I say that, I don't mean
 03:08:24 23 you personally, of course. I mean --
 03:08:26 24 MS. FERNANDS: Right.
 03:08:26 25 THE COURT: -- in terms of the documentation

03:08:30 1 that your company, your client, keeps. You know, they know
 03:08:36 2 how much of it they've made. You've provided a spreadsheet
 03:08:38 3 to that effect.
 03:08:40 4 Do they also know, you know, so much of it is
 03:08:44 5 sitting in the warehouse, so much of it was sent off for a
 03:08:47 6 trial, so much of it, you know, went bad after sitting
 03:08:52 7 around for a couple years and we destroyed it, and the
 03:08:57 8 amount we made is the same amount that we've now accounted
 03:09:01 9 for?
 03:09:01 10 MS. FERNANDS: Yes, I'm certain all of that
 03:09:04 11 information exists, and we have tried to provide that in
 03:09:06 12 discovery, because not only did we provide what batches were
 03:09:10 13 made, but we also provided a spreadsheet as to clinical
 03:09:13 14 trials. Although that could, I think, be updated, but
 03:09:17 15 there's a second large spreadsheet in the production as to
 03:09:19 16 what was sent off for clinicals.
 03:09:21 17 So, yes, that information could be put together
 03:09:24 18 as to what would happen. I think the relevant question here
 03:09:27 19 is that this agreement isn't going to speak to what happened
 03:09:29 20 to it.
 03:09:30 21 THE COURT: Yeah. So, I understand the question
 03:09:34 22 I'm asking is not perhaps a hundred-percent germane to why
 03:09:38 23 we're here.
 03:09:39 24 So, let me just ask Ms. Morrison: Do you know,
 03:09:43 25 does your side sort of -- you know, I don't want to ask a

03:09:57 1 question that asks for your work product, so if you can't
 03:10:03 2 answer the question without disclosing things you don't want
 03:10:05 3 to disclose, just tell me.
 03:10:08 4 But essentially can you account for all the
 03:10:10 5 product that they've made?
 03:10:11 6 MS. MORRISON: So, I'm not sure I can answer
 03:10:15 7 that, Your Honor, but I can answer a slightly different
 03:10:18 8 question which relates to the relevance of the agreement, if
 03:10:23 9 that's helpful.
 03:10:24 10 THE COURT: You guys both want to get me back to
 03:10:26 11 the agreement. Okay. Well, go ahead. Maybe that's a good
 03:10:29 12 segue.
 03:10:29 13 MS. MORRISON: And I want to see if I can --
 03:10:31 14 would it be helpful if I came to the podium?
 03:10:33 15 THE COURT: I don't know. I can hear you fine
 03:10:35 16 from here.
 03:10:36 17 MS. MORRISON: As long as you can hear me and
 03:10:37 18 the court reporter can, I'm happy to stay here. The
 03:10:39 19 agreement -- I think the real sticking point between the
 03:10:42 20 parties, and I will say that Ms. Fernands and my team did
 03:10:45 21 try to work this out, and I think the real sticking point,
 03:10:49 22 and they did offer some unredacted version of the agreement,
 03:10:53 23 but the real sticking point is something called the joint
 03:10:56 24 development -- excuse me, the global development plan.
 03:10:59 25 And I think the issue is this, Your Honor: It's

03:11:03 1 not so much about -- it is, in part, about what actually was
 03:11:07 2 made and what happened to it. That's part of the issue.
 03:11:11 3 But the other part of the issue, of course, is
 03:11:13 4 what the parties' expectations were as of the date of the
 03:11:17 5 hypothetical negotiation for damages purposes.
 03:11:20 6 THE COURT: Well, right. And so, that's a
 03:11:22 7 damages question.
 03:11:23 8 MS. MORRISON: Yes.
 03:11:23 9 THE COURT: The questions I was asking really
 03:11:29 10 had to do with the safe harbor. And I think the way you
 03:11:34 11 wrote your letter, you started off with the safe harbor.
 03:11:38 12 So, I started where you started.
 03:11:39 13 MS. MORRISON: Okay.
 03:11:39 14 THE COURT: But is the damages the more
 03:11:46 15 significant issue?
 03:11:47 16 MS. MORRISON: I think at this point it perhaps
 03:11:49 17 is, Your Honor, because the damages issue -- so, our opening
 03:11:54 18 expert reports for both parties were due this past Friday.
 03:11:57 19 THE COURT: Okay.
 03:11:58 20 MS. MORRISON: And so, our damages expert has
 03:12:00 21 submitted his report or his opening report. He has a reply
 03:12:05 22 as well. And he relied, in part, on the redacted version of
 03:12:11 23 the Roche agreement that was produced that's also publicly
 03:12:15 24 available.
 03:12:16 25 THE COURT: Right, because it was attached to a

03:12:18 1 10K.

03:12:18 2 MS. MORRISON: It was attached to a 10K. So, he

03:12:20 3 had it, and they also produced that version. And so, he was

03:12:23 4 able to rely upon it.

03:12:25 5 And in that, he relied upon it because that

03:12:28 6 Roche agreement was signed just about, I believe --

03:12:31 7 THE COURT: Right, right. I gather it was

03:12:32 8 within a month or something.

03:12:34 9 MS. MORRISON: Yes, very close to the time of

03:12:36 10 the hypothetical negotiation. And so, it's highly relevant

03:12:39 11 to the Sarepta negotiator's state of mind coming to the

03:12:43 12 hypothetical negotiation about how important having a

03:12:45 13 license would be to Sarepta.

03:12:47 14 And so, I can't tell Your Honor what is in the

03:12:53 15 global development plan because I haven't seen it, but that

03:12:57 16 is one area where Regenxbio's facts, we can do nothing more

03:13:04 17 than suspect based on what's in the agreement. It's an

03:13:06 18 informed suspicion, I would say, that there are items in

03:13:09 19 that global development plan that would be relevant to the

03:13:12 20 damages analysis because it would inform Sarepta's position

03:13:16 21 coming to the hypothetical negotiation. And our damages

03:13:20 22 expert did rely pretty extensively on the redacted version

03:13:25 23 of the Roche agreement in his expert report.

03:13:29 24 And so, we do think it's -- I can't tell you

03:13:33 25 what exactly is in these sections that we don't have, of

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03:13:36 1 course, but I can give you a suspicion of what might be

03:13:39 2 there.

03:13:39 3 THE COURT: Well, so one of the things that was

03:13:41 4 said in the letter and, of course, Sarepta went second, was

03:13:53 5 there's a lot of other things in the global development or

03:13:55 6 in the agreement, and there were two things in particular.

03:14:00 7 One of them was something like exon and the other was

03:14:04 8 something else.

03:14:06 9 And that, in so many words, there's just a whole

03:14:13 10 lot of different things going on at once that have nothing

03:14:24 11 to do with the patent and the cultured cells. What in his

03:14:31 12 report or her report did your expert do about -- how did

03:14:36 13 they address things like that?

03:14:37 14 MS. MORRISON: So, I think what you're referring

03:14:40 15 to is the portions of the agreement that relate to exon

03:14:44 16 skipping and gene editing.

03:14:46 17 THE COURT: Okay. Yes.

03:14:48 18 MS. MORRISON: So, frankly, those are -- and I

03:14:50 19 think we've already said this to Sarepta, those are parts of

03:14:53 20 the agreements that we don't -- we're not interested in,

03:14:57 21 but -- and we would agree to not have those parts of the

03:15:02 22 agreement because they're not particularly relevant. But

03:15:04 23 the portions of the agreement our damages expert relied upon

03:15:08 24 are specific to the agreement about the gene therapy that is

03:15:14 25 made using the patented cultured host cells.

03:15:17 1 THE COURT: Okay.

03:15:18 2 MS. MORRISON: And so -- I'm sorry, Your Honor.

03:15:19 3 THE COURT: No, no, no. I thought you were

03:15:23 4 pausing there.

03:15:26 5 So, why don't we do this. Why don't I get --

03:15:30 6 because you could probably point me to in the agreement

03:15:33 7 where you think this stuff is that you'd like to have;

03:15:37 8 right?

03:15:38 9 MS. MORRISON: I certainly can try, Your Honor.

03:15:40 10 THE COURT: All right. Well, before you try,

03:15:42 11 can we get two redacted and two unredacted, one for me and

03:15:49 12 one for my excellent assistant here?

03:15:53 13 MS. FERNANDS: Okay. So, when Your Honor asked

03:15:54 14 for a highlighted, we actually highlighted the unredacted

03:15:58 15 with everything that is redacted.

03:15:59 16 THE COURT: Okay. So, in other words -- okay.

03:16:02 17 MS. FERNANDS: I think that might be --

03:16:04 18 THE COURT: Yeah, yeah. You know --

03:16:05 19 MS. FERNANDS: I can also bring an unredacted or

03:16:08 20 a clean one.

03:16:09 21 THE COURT: No, no. If it's yellow --

03:16:10 22 MS. FERNANDS: It is -- I brought three

03:16:14 23 different varieties, but I think that might be the most

03:16:17 24 efficient way to see what was redacted.

03:16:19 25 THE COURT: And so, the yellow is the stuff that

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03:16:21 1 was redacted?

03:16:23 2 MS. FERNANDS: Was redacted from the public

03:16:24 3 version, correct.

03:16:25 4 THE COURT: So, Ms. Morrison, where would you

03:16:27 5 like to direct me to and you better, I guess -- because the

03:16:32 6 pagination you have is probably different than the

03:16:35 7 pagination of the one I just got.

03:16:36 8 MS. MORRISON: It is. And what I have, Your

03:16:37 9 Honor, are section numbers --

03:16:39 10 THE COURT: Right. So, go ahead.

03:16:42 11 MS. MORRISON: -- which are, in some senses,

03:16:44 12 partially. So, I'll start with the one -- there's quite a

03:16:47 13 few, Your Honor, so I'm not sure how many of these you would

03:16:50 14 like me to --

03:16:51 15 THE COURT: Well, there's a magic to the number

03:16:53 16 three.

03:16:53 17 MS. MORRISON: Okay.

03:16:54 18 THE COURT: So, why don't you give me your best

03:16:56 19 three.

03:16:56 20 MS. MORRISON: All right. Let me look at the

03:16:57 21 sections that were highlighted for me here.

03:17:00 22 So, one that's missing -- we believe is

03:17:04 23 partially redacted that's missing information would be

03:17:09 24 Section 8.4.1.

03:17:12 25 THE COURT: Okay.

13		15	
03:17:25	1 MS. MORRISON: And, Your Honor, if I might.	03:20:11	1 be doing together. But there's no way for us to know. And
03:17:27	2 Ms. Fernands --	03:20:15	2 these kinds of issues is why we've been requesting
03:17:27	3 THE COURT: Hold on just one second.	03:20:18	3 production of the full agreement.
03:17:28	4 MS. MORRISON: I was just going to ask	03:20:19	4 THE COURT: Okay. So, let me just check the
03:17:31	5 Ms. Fernands if she has a fully redacted version. I don't	03:20:28	5 definitions here.
03:17:33	6 have a paper copy with me.	03:21:17	6 Now, we had a discovery dispute some time ago,
03:17:34	7 THE COURT: Right. Got it.	03:21:27	7 and we were discussing stuff that occurred after the
03:17:36	8 MS. MORRISON: If she has one, that would be	03:21:36	8 expiration of the patent. Do you remember what stuff we
03:17:37	9 very helpful.	03:21:41	9 were discussing?
03:17:39	10 MS. FERNANDS: I have Exhibit H to your	03:21:42	10 MS. MORRISON: I believe, Your Honor, and I'm
03:17:41	11 Complaint.	03:21:44	11 sure Ms. Fernands will correct me if I have it wrong, but I
03:17:41	12 MS. MORRISON: Thank you. Thank you so much.	03:21:48	12 believe that we were discussing whether Sarepta needed to
03:17:43	13 THE COURT: So, I'm just curious, Ms. Fernands.	03:21:53	13 produce its forecasts for sales of the ultimate gene therapy
03:17:55	14 So, I'm looking at the Table of Contents under Article VIII,	03:22:01	14 product for after the expiration of the patent --
03:17:58	15 and there's in what I have and what's in the public version	03:22:07	15 THE COURT: Okay.
03:18:03	16 an 8.4, and an 8.86 and an 8.8.	03:22:09	16 MS. MORRISON: -- as well as some other things.
03:18:08	17 And when I look at the -- going to where	03:22:10	17 But I think that was the main event.
03:18:12	18 Ms. Morrison's directed, I notice that there's an 8.5 and an	03:22:12	18 MS. FERNANDS: I think the main thrust was
03:18:18	19 8.7. And I'm just wondering why they're not in the Table of	03:22:13	19 Sarepta's projections generally for any of the final
03:18:23	20 Contents.	03:22:15	20 products, the gene therapy products. And we were ordered to
03:18:23	21 MS. FERNANDS: I do not know the answer to that	03:22:18	21 produce the adopted and approved projections from the point
03:18:26	22 question, but I hadn't noticed that. And you are correct.	03:22:21	22 of hypothetical negotiation to the present.
03:18:38	23 THE COURT: Okay. Well, I guess we can hold	03:22:23	23 And Sarepta then did produce a number of
03:18:41	24 that thought.	03:22:25	24 spreadsheets for both the assumptions underlying them and
03:18:42	25 So, Ms. Morrison.	03:22:30	25 the spreadsheets for a period of three years with Sarepta's
14		16	
03:18:44	1 MS. FERNANDS: I'm sorry. This is the executed	03:22:33	1 projections in them.
03:18:46	2 version, Your Honor. I don't know why --	03:22:35	2 THE COURT: Okay. And are those things, those
03:18:47	3 THE COURT: Probably a lot of last-minute	03:22:37	3 projections, are those things that your damages expert used?
03:18:50	4 changes.	03:22:41	4 MS. MORRISON: Yes.
03:18:50	5 All right. So, you were directing me to 8.4; is	03:22:42	5 THE COURT: Okay. Well, I'd have to say,
03:18:53	6 that right, or 8.41?	03:22:46	6 looking at 8.4.1A and B, I have difficulty thinking that
03:18:55	7 MS. MORRISON: Yes, 8.4.1 is the first place I	03:22:57	7 those help any. They certainly don't have any numbers in
03:18:59	8 would direct Your Honor. That Section 8.4 is entitled	03:23:01	8 them. So, that's tentatively what I think about that.
03:19:06	9 "Demand Forecast Plans."	03:23:06	9 Why don't you try another one.
03:19:06	10 THE COURT: Right. And then, because I'm	03:23:08	10 MS. MORRISON: Sure, Your Honor. So, the next
03:19:09	11 working on the assumption that if it's not in yellow, I can	03:23:09	11 one, and I mentioned this earlier, is the Joint Global
03:19:12	12 say it out loud, 8.4.1 is "Details."	03:23:13	12 Development Plan, which is the schedule to the agreement.
03:19:15	13 MS. MORRISON: Correct, Your Honor.	03:23:15	13 It's Schedule 4.3.1. So, I expect that will be at the very
03:19:16	14 THE COURT: And hold on. Let me just read it	03:23:21	14 back, Your Honor, but again, it's not attached to the
03:19:20	15 for a minute.	03:23:22	15 version that --
03:19:46	16 So, are you expecting there to be numbers of	03:23:23	16 THE COURT: 4.3.1, "Joint Global Development
03:19:49	17 some kind in these paragraphs?	03:23:26	17 Plan." I see it.
03:19:50	18 MS. MORRISON: Your Honor, it's very difficult	03:23:27	18 MS. MORRISON: Yes, Your Honor.
03:19:51	19 for me to tell because in the fully redacted version, it	03:23:28	19 THE COURT: Or, I mean, I see the schedule. Ah,
03:19:54	20 simply has an asterisk. Your Honor can't see that from	03:24:37	20 okay. Development -- Global Development Plan.
03:19:57	21 here. I apologize. I don't know why I'm holding it up.	03:26:16	21 Ms. Fernands, I'm looking at a page that has 20
03:20:00	22 But it simply has an asterisk.	03:26:20	22 at the bottom in this, what I think is all part of this one
03:20:02	23 So, again, this is one of those things that if	03:26:26	23 schedule, which there seems to have numbers.
03:20:03	24 there were numbers there, it could potentially be very	03:26:37	24 Have you found what I'm talking about?
03:20:07	25 relevant to Sarepta's expectation of what it and Roche would	03:26:39	25 MS. FERNANDS: Yes, I found what you're talking

<p>03:26:40 1 about.</p> <p>03:26:40 2 THE COURT: Is that something that's been</p> <p>03:26:42 3 otherwise produced?</p> <p>03:26:43 4 MS. FERNANDS: I think, to the extent that type</p> <p>03:26:49 5 of information has come to fruition in reality, it is</p> <p>03:26:53 6 reported in the 10Ks.</p> <p>03:26:57 7 THE COURT: So, it does seem that there's</p> <p>03:27:27 8 certainly costs and expenses on that in the next couple of</p> <p>03:27:34 9 pages that are probably, in some at least general sense,</p> <p>03:27:52 10 relevant to expected profits down the road; right?</p> <p>03:27:55 11 MS. FERNANDS: I think to the extent any of this</p> <p>03:27:58 12 is relevant, it would be captured in the adopted and</p> <p>03:28:03 13 approved projections that were produced. I don't think this</p> <p>03:28:10 14 instance -- this -- and sort of this cost information, I</p> <p>03:28:14 15 think, does not contain the types of projections that I</p> <p>03:28:18 16 understand Ms. Morrison to be expecting, which I think is</p> <p>03:28:22 17 sort of more of the sales and a sales-type projection which</p> <p>03:28:26 18 I don't think is at all in this document and that we have</p> <p>03:28:29 19 produced, again, through the adopted and approved</p> <p>03:28:33 20 projections.</p> <p>03:28:34 21 THE COURT: Ms. Morrison.</p> <p>03:28:34 22 MS. MORRISON: I think what we're looking for is</p> <p>03:28:37 23 any information that goes to Sarepta's sort of, for lack of</p> <p>03:28:42 24 a better word, state of mind at the time of the hypothetical</p> <p>03:28:46 25 negotiation. I, obviously, haven't seen this document.</p>	<p>03:30:06 1 ask you to produce Pages 20 to 22?</p> <p>03:30:11 2 MS. FERNANDS: I hope I'm not arguing against</p> <p>03:30:13 3 myself here, because I think it is all irrelevant, but yes,</p> <p>03:30:16 4 if you were to think that any of it is relevant, everything</p> <p>03:30:21 5 up to Page 20 should not be included.</p> <p>03:30:23 6 MS. MORRISON: And, Your Honor, I guess just to</p> <p>03:30:25 7 respond to that, we're operating from a place of lack of</p> <p>03:30:29 8 knowledge. So, what Sarepta believes is relevant may be</p> <p>03:30:32 9 different than what Regenxbio believes is relevant. And so,</p> <p>03:30:37 10 we don't see the -- there's a Protective Order in this case.</p> <p>03:30:41 11 We would agree that no one but the lawyers at Fish &</p> <p>03:30:45 12 Richardson and the lawyers for Penn would be able to see</p> <p>03:30:48 13 this agreement. That would be it.</p> <p>03:30:49 14 So, there's not a commercial risk to Sarepta to</p> <p>03:30:52 15 letting us look at this and determine whether there's things</p> <p>03:30:56 16 in there that our damages expert thinks are relevant. We</p> <p>03:30:59 17 can deal with the commercial risk, but there's little or no</p> <p>03:31:03 18 risk to allowing us to see the agreement to Sarepta.</p> <p>03:31:08 19 THE COURT: Okay. So, what's your third choice?</p> <p>03:31:11 20 MS. MORRISON: So, let me see. The other one is</p> <p>03:31:26 21 also -- there's also another schedule that several sections</p> <p>03:31:34 22 of the agreement refer to. It's Schedule 1.263. And it's</p> <p>03:31:43 23 entitled --</p> <p>03:31:43 24 THE COURT: Okay. Right. I think it's -- I saw</p> <p>03:31:46 25 it while I was leafing through trying to find the one we</p>
<p>03:28:49 1 It's completely missing from the public version.</p> <p>03:28:52 2 But to the extent it has any sort of projection</p> <p>03:28:55 3 about costs, about volumes, about anything like that, I'm</p> <p>03:29:03 4 operating from a place of lack of knowledge because I</p> <p>03:29:06 5 haven't seen the document. But that might be relevant to</p> <p>03:29:11 6 our damages analysis because it would be relevant to what</p> <p>03:29:14 7 Sarepta would be willing to pay to get a license from</p> <p>03:29:19 8 Regenxbio.</p> <p>03:29:19 9 And so, without being able to see the document,</p> <p>03:29:23 10 I can't fully answer Your Honor's questions.</p> <p>03:29:27 11 THE COURT: Okay. All right.</p> <p>03:29:32 12 So, let's just hold that thought. Give me a</p> <p>03:29:35 13 third one.</p> <p>03:29:36 14 MS. FERNANDS: Before we move on, may I speak to</p> <p>03:29:40 15 the rest of that, Your Honor, because I think --</p> <p>03:29:41 16 THE COURT: Sure.</p> <p>03:29:41 17 MS. FERNANDS: -- even if you're looking at</p> <p>03:29:43 18 starting at Page 20, which I would argue they have</p> <p>03:29:46 19 information, to the extent relevant in other ways,</p> <p>03:29:48 20 everything up to Page 20, I think even from a cursory</p> <p>03:29:50 21 review, you can see has nothing to do with financials. And</p> <p>03:29:54 22 I would -- so, clearly not relevant to what we're talking</p> <p>03:29:59 23 about here for purposes of damages.</p> <p>03:30:00 24 THE COURT: Well, so what is your point here?</p> <p>03:30:02 25 That if I go wild and ask you to produce this, I should just</p>	<p>03:31:49 1 were just looking at. That's another one where the schedule</p> <p>03:31:52 2 isn't actually on the list in the Table of Contents.</p> <p>03:31:54 3 MS. MORRISON: It's not, Your Honor.</p> <p>03:31:55 4 THE COURT: But I've got it here. Let me just</p> <p>03:31:58 5 see whether I've got the first page of it.</p> <p>03:32:01 6 MS. MORRISON: And, Your Honor, the reason we</p> <p>03:32:03 7 think it might be relevant is there's definitions throughout</p> <p>03:32:06 8 the agreement of commercial supply agreement, development</p> <p>03:32:10 9 supply agreement and supply agreements that refer to this</p> <p>03:32:14 10 schedule as containing corresponding quantity agreements.</p> <p>03:32:19 11 THE COURT: Hold on just a minute.</p> <p>03:32:23 12 MS. MORRISON: Excuse me. I misspoke.</p> <p>03:32:25 13 Corresponding quality agreements fulfilling the requirements</p> <p>03:32:28 14 and so on.</p> <p>03:32:49 15 THE COURT: Yeah, on the surface, I don't see</p> <p>03:32:58 16 much here.</p> <p>03:33:09 17 All right. So, why don't we do this. Why don't</p> <p>03:33:13 18 we just take a short break, all right, and I'll be back.</p> <p>03:33:16 19 DEPUTY CLERK: All rise.</p> <p>03:33:17 20 (Recess was taken.)</p> <p>03:45:30 21 DEPUTY CLERK: All rise.</p> <p>03:45:32 22 THE COURT: All right. Be seated.</p> <p>03:45:35 23 So, part of what's public in here seemed to me</p> <p>03:45:47 24 to be -- well, actually, let me just ask.</p> <p>03:45:51 25 Ms. Morrison, you said your expert used this in</p>

03:45:59 **1** their opening report. Can you give me some hint as what
 03:46:12 **2** they were using as public information? What sort of things
 03:46:15 **3** were they using in the unredacted portions?
 03:46:18 **4** MS. MORRISON: So, I think I can give you a
 03:46:24 **5** general idea of what he was using. In general, he was using
 03:46:29 **6** the portions of -- the unredacted portions that he could see
 03:46:34 **7** to describe what Sarepta's position would have been at the
 03:46:39 **8** time of the hypothetical negotiation.
 03:46:41 **9** So, in other words, they had just made this very
 03:46:43 **10** large deal with Roche. They would have been looking forward
 03:46:46 **11** to certain payments and milestones based on the deal with
 03:46:50 **12** Roche. We don't have the full scope of that because I think
 03:46:53 **13** perhaps some of it is in the parts that are missing exactly
 03:46:56 **14** what was coming forward.
 03:46:58 **15** But the expert's theory, at a high level -- and
 03:47:02 **16** please don't hold me to this, Your Honor, if I don't have it
 03:47:06 **17** exactly right. I am certainly not an economist. But that
 03:47:10 **18** Sarepta at the time of the hypothetical negotiation would
 03:47:13 **19** have effectively had two choices.
 03:47:16 **20** They could have either taken a license and
 03:47:18 **21** continued with development because their product required
 03:47:21 **22** the patented cultured host cell -- in order to continue the
 03:47:24 **23** development, they needed the patented cultured host cells,
 03:47:28 **24** or they would have had to stop and wait for the patent to
 03:47:31 **25** expire.

03:47:32 **1** And so, what would they have been thinking
 03:47:33 **2** about? And the Roche agreement formed part of that of what
 03:47:37 **3** they would have been thinking about in considering the cost
 03:47:39 **4** it would have been to stop that development.
 03:47:41 **5** THE COURT: So, there's a very large number that
 03:47:44 **6** appears to be unredacted as kind of like the upfront
 03:47:48 **7** payment; right? Is that part of --
 03:47:50 **8** MS. MORRISON: That's part of what he relied on,
 03:47:52 **9** yes, Your Honor.
 03:47:52 **10** THE COURT: And the agreement, is it the case,
 03:48:03 **11** your understanding, your expert's understanding, that large
 03:48:09 **12** number, when it's talking about gene splicing or exon, are
 03:48:15 **13** those things that grow out of, in your theory, you know, the
 03:48:21 **14** use of your cultured cells or are they just completely --
 03:48:24 **15** MS. MORRISON: No.
 03:48:24 **16** THE COURT: -- things that Sarepta has free
 03:48:30 **17** license to, you know, make as much money as they can from
 03:48:35 **18** it?
 03:48:35 **19** MS. MORRISON: If I understand it correctly,
 03:48:38 **20** Your Honor, the exon-skipping drug -- Sarepta has a marketed
 03:48:43 **21** product that does not use the cultured host cells and is not
 03:48:47 **22** implicated in this case that is used to treat Duchenne
 03:48:54 **23** Muscular Dystrophy that is -- it's called an exon-skipping
 03:48:56 **24** drug.
 03:48:56 **25** THE COURT: Okay.

03:48:57 **1** MS. MORRISON: Perhaps Ms. Fernands can correct
 03:48:58 **2** me if I've gotten the science wrong there, but that does not
 03:49:02 **3** have anything to do with the cultured host cells in this
 03:49:05 **4** case.
 03:49:05 **5** And I believe the same is true for the
 03:49:07 **6** gene-editing piece. Neither of those are related to the
 03:49:12 **7** cultured host cells.
 03:49:13 **8** THE COURT: So, the things in the agreement that
 03:49:15 **9** talk about, for lack of a better word, progress payments for
 03:49:34 **10** various milestones, is your expert able to tell that one of
 03:49:42 **11** these is the SRP one as opposed to the other ones?
 03:49:48 **12** MS. MORRISON: So, I'm not a hundred percent
 03:49:50 **13** sure. I believe our understanding is that at least that
 03:49:55 **14** upfront payment was for -- related to the development of
 03:50:00 **15** SRP-9001 using the patented cultured host cells, but I
 03:50:05 **16** believe we're missing some of the information. I believe.
 03:50:08 **17** And, again, Your Honor, I may not have this
 03:50:10 **18** exactly right, but to be able to delineate that exactly
 03:50:14 **19** because some of that information is redacted, I believe.
 03:50:18 **20** But, again, I can't see what's redacted.
 03:50:20 **21** THE COURT: Okay. Thank you.
 03:50:22 **22** Is there anything more you want to say,
 03:50:24 **23** Ms. Fernands?
 03:50:24 **24** MS. FERNANDS: I think to the extent the expert
 03:50:27 **25** is relying on this, there is -- the upfronts, as you said,

03:50:30 **1** were public. To the extent that any other payment gets made
 03:50:33 **2** in the future, that would be reported. None have been.
 03:50:37 **3** And their expert has not relied on this as being
 03:50:42 **4** comparable. So, I don't think the details of the specific,
 03:50:45 **5** whether it be a percentage or the milestone for a particular
 03:50:49 **6** event, would be relevant because this is not relied on as a
 03:50:52 **7** comparable license. It's relied on for Sarepta's state of
 03:50:55 **8** mind which, again, I think that the projections that we
 03:50:58 **9** provided would provide that information without having to
 03:51:01 **10** produce this agreement.
 03:51:02 **11** MS. MORRISON: We, obviously, don't agree, Your
 03:51:10 **12** Honor, or we wouldn't be here asking for production of the
 03:51:12 **13** agreement. At least that there is a reasonable likelihood
 03:51:15 **14** that there are things in there that are relevant to
 03:51:18 **15** Sarepta's state of mind that would inform the hypothetical
 03:51:23 **16** negotiation.
 03:51:23 **17** THE COURT: Okay. And so, the big number, the
 03:51:50 **18** upfront payment, which I believe is three-quarters of a
 03:51:54 **19** billion dollars, maybe that's not big in the pharmaceutical
 03:51:57 **20** world, but it seems big to me. Your belief is that that is
 03:52:06 **21** basically for the access to the SRP materials; right?
 03:52:14 **22** MS. MORRISON: Yes, the SRP-9001 made using the
 03:52:17 **23** cultured host cells.
 03:52:19 **24** THE COURT: And your expert, his calculations
 03:52:31 **25** here, I suppose, are for a reasonable royalty?

03:52:35 1 MS. MORRISON: Yeah, it's for a lump sum payment
 03:52:37 2 that the parties would have agreed to, but yes, it's not a
 03:52:40 3 lost profits analysis. It's a reasonable royalty analysis
 03:52:42 4 under Georgia-Pacific.
 03:52:43 5 THE COURT: And does the amount of money that
 03:52:45 6 changed hands in this agreement play into that reasonable
 03:52:50 7 royalty analysis in a quantitative way?
 03:52:55 8 MS. MORRISON: It does, Your Honor, only in
 03:52:57 9 that -- not in the sense that our expert certainly is not
 03:53:02 10 saying, well, Sarepta is going to get paid "X" dollars by
 03:53:05 11 Roche, and so they would have paid "Y" dollars. It's not
 03:53:08 12 that direct.
 03:53:09 13 But it's a -- and, again, I don't want to
 03:53:13 14 misquote. I don't have his report memorized. But it goes
 03:53:17 15 to several things.
 03:53:18 16 It goes to Sarepta's state of mind as to the
 03:53:21 17 value of the market as to what they would be leaving on the
 03:53:24 18 table if they didn't take a license. And so, how much the
 03:53:28 19 license was worth to them.
 03:53:30 20 It goes to at least those sorts of issues, but
 03:53:33 21 it's not a direct quote.
 03:53:35 22 THE COURT: Well, I guess what I'm wondering is
 03:53:42 23 so, if there are, you know, progress payments -- you know,
 03:53:45 24 let's say, just hypothetically here, but somewhere in this
 03:53:52 25 agreement it says, Okay, and there will be \$10 million every

03:54:00 1 month, you know, for the next five years, or it says \$5
 03:54:05 2 million, or it says a hundred million dollars, how is that
 03:54:08 3 going to affect anything?
 03:54:10 4 MS. MORRISON: So, I think what it would impact,
 03:54:12 5 Your Honor, is, again, I can only talk in hypotheticals
 03:54:16 6 because I can't see the agreement. But if there were, for
 03:54:19 7 example, a provision that said there's going to be a
 03:54:22 8 progress payment of \$10 million for every month so long as
 03:54:27 9 you, Sarepta, are actually making progress towards
 03:54:30 10 developing SRP-9001, without a license, excuse me, to the
 03:54:35 11 patented cultured host cell, our damages theory is Sarepta
 03:54:39 12 would have had to stop development and wait for the patent
 03:54:42 13 to expire, which is a term of about 35 months.
 03:54:45 14 And so, Sarepta would be thinking, Well, if we
 03:54:48 15 don't take this license, we're going to lose 35 months of
 03:54:51 16 \$10 million a month, and that's really valuable to us. And
 03:54:55 17 so, it would go into how Sarepta is valuing that license --
 03:54:59 18 THE COURT: Right.
 03:54:59 19 MS. MORRISON: -- if there were such a
 03:55:01 20 provision.
 03:55:01 21 THE COURT: But, you know, once you've said
 03:55:06 22 \$750 million, you know, whether it's over the next 35 months
 03:55:12 23 another \$750 million or whether it's, you know, a mere \$100
 03:55:17 24 million, or if that's not being factored into how much they
 03:55:26 25 pay, what difference does it make?

03:55:28 1 MS. MORRISON: Well, so it would be factored
 03:55:30 2 into how much they pay. And, Your Honor, it's difficult for
 03:55:32 3 me to -- again, I'm not an economist, but essentially our
 03:55:36 4 expert's damages number or his model looks at: What is the
 03:55:42 5 value of that 35 months to Sarepta and what is the value of
 03:55:45 6 that 35 months to Regenxbio? And how would they come into
 03:55:49 7 this and bargain between them to divide that value
 03:55:53 8 effectively?
 03:55:54 9 And so, if there are more payments in this
 03:55:57 10 agreement that Sarepta would receive during that 35 months,
 03:56:01 11 that would add to the value of the license to Regenxbio.
 03:56:06 12 And I'm sure that our damages expert could explain this far
 03:56:10 13 better than I can, because I'm not an economist, and he'll
 03:56:13 14 have graphs and models, to the extent that we get that far
 03:56:17 15 in this case. But it would factor into the value of the
 03:56:23 16 license to Sarepta.
 03:56:45 17 THE COURT: What is your expert's bottom line
 03:56:50 18 lump sum number at this point?
 03:56:52 19 MS. MORRISON: I'm going to misquote it, Your
 03:56:55 20 Honor, but it's approximately -- it's just a little over
 03:56:58 21 [REDACTED]. Because he valued that delay and something
 03:57:06 22 again, I'm not going to get the number right, but the value
 03:57:08 23 of that delay to Sarepta that if they had to wait the
 03:57:12 24 35 months, it would have been on the order of [REDACTED]
 03:57:16 25 [REDACTED] I'm forgetting, but it was [REDACTED]

03:57:19 1 [REDACTED], the loss Sarepta would have incurred if they had
 03:57:23 2 had to wait, according to his models.
 03:57:26 3 I'm quite sure Sarepta will disagree with that
 03:57:28 4 valuation.
 03:57:28 5 THE COURT: Yeah, I think that's a reasonable
 03:57:30 6 certainty.
 03:57:30 7 MS. MORRISON: Yeah.
 03:57:58 8 THE COURT: So, does your economist write at
 03:58:00 9 this point, have sort of like a range of values based on, I
 03:58:11 10 don't know, how much they were expecting to get paid over
 03:58:13 11 the 35 months? I mean, do you have any information at all
 03:58:18 12 about -- other than the upfront lump sum, is there any other
 03:58:22 13 public information as to what's in the agreement, or do you
 03:58:26 14 have any other information about how much revenue this was
 03:58:31 15 supposed to generate?
 03:58:32 16 MS. MORRISON: Yes, from Sarepta's projections,
 03:58:34 17 we do.
 03:58:35 18 THE COURT: Uh-huh.
 03:58:40 19 MS. MORRISON: But I have no way of knowing
 03:58:42 20 whether those projections include -- those projections are
 03:58:46 21 Sarepta's -- at least my understanding of them is they are
 03:58:48 22 Sarepta's own U.S. sales. I don't know that they include --
 03:58:54 23 at least my understanding of them is that they do not
 03:58:57 24 include these kind of -- payments from Roche.
 03:59:01 25 And so, that would be additional value that

03:59:04 1 Sarepta -- potential -- if there is, as Your Honor
 03:59:07 2 hypothesized, a provision that would require Sarepta to make
 03:59:12 3 progress in order to earn additional payments, that is not
 03:59:15 4 currently accounted for in our damages model, because we are
 03:59:18 5 unaware of such payments. And that is not -- the Sarepta
 03:59:22 6 forecasts are based on their own U.S. sales.
 03:59:24 7 THE COURT: Do you have any comment on that,
 03:59:31 8 Ms. Fernands?
 03:59:32 9 MS. FERNANDS: I believe the forecasts -- I
 03:59:35 10 don't know if that's entirely accurate, and I believe that
 03:59:38 11 the forecasts have tabs for a variety of issues, including a
 03:59:46 12 Roche tab, although I cannot speak to the details of what is
 03:59:49 13 in that tab. But I do know that that tab is in the
 03:59:51 14 projections that were produced.
 03:59:52 15 I don't think -- I think what I'm hearing is a
 03:59:55 16 lot of the agreement might, which is a lot of speculation --
 03:59:59 17 where what we have is it is definitely not asserted that
 04:00:04 18 it's comparable, and they know the general overall value
 04:00:08 19 from public information. So, the details are not relevant.
 04:00:16 20 MS. MORRISON: And, again, Your Honor, we just
 04:00:17 21 disagree, and I think Rule 26, right, does not require that
 04:00:22 22 the information that we're seeking during discovery ends up
 04:00:26 23 being admissible as evidence or that we necessarily have to
 04:00:30 24 rely on it. And the reason I'm saying might is because, of
 04:00:33 25 course, I haven't seen these provisions because Sarepta has

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04:00:36 1 refused to produce them.
 04:00:39 2 And so, Sarepta, at this point, appears to be
 04:00:43 3 attempting to hold us to a standard of we have to show that
 04:00:46 4 the things that we haven't seen are going to be admissible
 04:00:50 5 or end up being relevant to the damages analysis. All I can
 04:00:53 6 say is, based on this agreement, which was marked at
 04:00:56 7 multiple depositions, it was, in fact, cited in multiple
 04:01:00 8 interrogatory responses on comparable licenses and on our
 04:01:04 9 damages analysis, and then it was cited in our expert
 04:01:07 10 reports.
 04:01:08 11 We clearly think that it's relevant to the
 04:01:11 12 damages -- at least to the damages issues, and I really
 04:01:13 13 haven't touched on the safe harbor issues. But it's
 04:01:17 14 certainly relevant to the damages issues.
 04:01:19 15 MS. FERNANDS: I don't believe that either of
 04:01:20 16 the interrogatory responses or the damages report asserts
 04:01:23 17 this as a comparable license.
 04:01:24 18 MS. MORRISON: Interrogatory 17, which asks for
 04:01:28 19 comparable licenses, this response was or, excuse me, this
 04:01:33 20 document was cited in Interrogatory Number 17.
 04:01:37 21 Now, again --
 04:01:37 22 MS. FERNANDS: Well, what is the Bates number
 04:01:39 23 that it was cited as?
 04:01:41 24 MS. MORRISON: It was cited as deposition
 04:01:43 25 exhibit -- recited as a deposition exhibit to

04:01:49 1 Mr. Estepan's deposition.
 04:01:52 2 THE COURT: All right. As much fun as this is
 04:01:54 3 for the two of you, Ms. Fernands, Page 69, there's
 04:02:00 4 Table 9.4.1 that's called "Lead Product Regulatory
 04:02:04 5 Milestones." That's in the public version.
 04:02:09 6 Is the lead product here SRP-9001?
 04:02:13 7 MS. FERNANDS: Yes, Your Honor.
 04:02:13 8 THE COURT: And the public version says,
 04:02:20 9 "Achievement of lead product regulatory milestone event,"
 04:02:23 10 and then there's some redacted information. And part of the
 04:02:29 11 redacted information doesn't provide based on various events
 04:02:38 12 or what seem like decently large numbers of payments.
 04:02:48 13 Why isn't that relevant information?
 04:02:51 14 MS. FERNANDS: I think, again, that isn't
 04:02:53 15 relevant information because let's just step back. This is
 04:02:56 16 about the final products, ex-US, and not about cultured host
 04:03:03 17 cells.
 04:03:03 18 And so, just to start on the broadest brush
 04:03:08 19 strokes, this agreement should not be relevant to damages.
 04:03:11 20 To the extent it's relevant to damages as the larger picture
 04:03:16 21 that -- their only argument is that it's Sarepta's state of
 04:03:20 22 mind about continuing development and what that value is for
 04:03:23 23 which Sarepta's projections should be adequate.
 04:03:28 24 These details about what would be paid for ex-US
 04:03:32 25 activities for the final products are far removed from the

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04:03:36 1 value of the cultured host cell that they assert that
 04:03:41 2 Sarepta would be infringing.
 04:04:01 3 MS. MORRISON: And I'm happy to address that if
 04:04:03 4 you --
 04:04:03 5 THE COURT: No, no. So, I take it in the parts
 04:04:12 6 here where it talks about payments relating to gene therapy
 04:04:20 7 product or gene editing, you don't care about those; right?
 04:04:29 8 MS. MORRISON: Well, gene editing, I think
 04:04:32 9 that's right.
 04:04:33 10 Gene therapy product, I don't know how that's
 04:04:35 11 defined. I believe that might be relevant because the
 04:04:39 12 accused cultured host cells are used to make more than
 04:04:45 13 SRP-9001. They are used to make other gene therapy products
 04:04:48 14 by Sarepta. And so, perhaps those would also be relevant.
 04:04:54 15 But I would agree with you on gene editing and
 04:04:58 16 exon skipping, those are not relevant.
 04:05:00 17 THE COURT: All right. Okay.
 04:05:03 18 Well, so here's what I'm going to do. With the
 04:05:12 19 understanding that this agreement is Attorneys' Eyes Only,
 04:05:16 20 which I take it must include the expert, I'm going to order
 04:05:26 21 its production. I do so because I think, based on what I've
 04:05:36 22 heard, that the lead product regulatory information that's
 04:05:40 23 in here, to the extent that I see it on, for example,
 04:05:46 24 Page 69, and Page 70, and Page 72 and Page 74, that while I
 04:06:08 25 think the relationship between payments for final products,

04:06:16 1 you know, are not direct evidence of value of the cultured
 04:06:23 2 cells or the production method, you know, there's both
 04:06:31 3 quantitative and qualitative.
 04:06:33 4 And it may be that some of this is similar or
 04:06:37 5 different, I don't know, to the actual -- to the projections
 04:06:46 6 that were made. Maybe the projections should be roughly the
 04:06:50 7 same because -- well, you would think they would be somewhat
 04:06:56 8 close.
 04:06:56 9 But I think that for an expert to be relying on
 04:07:04 10 a license, even for state of mind, it's a big handicap not
 04:07:11 11 to have the entire agreement available to him so that he can
 04:07:21 12 decide what there is in it that is relevant to his
 04:07:28 13 undertaking.
 04:07:29 14 And, you know, I think the lead -- it seems to
 04:07:35 15 me at least reasonable to say that the lead product
 04:07:38 16 information is relevant to his undertaking, which is partly
 04:07:44 17 based on the fact that in the expert report, he's managed to
 04:07:51 18 use the agreement as part of his support for his opinions.
 04:08:02 19 And so, having a high degree of confidence in
 04:08:09 20 the Confidentiality Order, and I think it should be
 04:08:23 21 produced.
 04:08:25 22 MS. FERNANDS: May we produce in a redacted form
 04:08:27 23 with the exon skipping and gene editing all removed?
 04:08:31 24 MS. MORRISON: Your Honor, we don't have any
 04:08:32 25 objection to that other than our concern that as long as


04:08:36 1 that is all that's removed, I don't have a concern about
 04:08:39 2 that. And as long as --
 04:08:41 3 THE COURT: Okay.
 04:08:41 4 MS. MORRISON: As long as our expert isn't going
 04:08:43 5 to be cross-examined with, You didn't have the complete
 04:08:47 6 agreement, that's my only concern, to be honest. We're not
 04:08:52 7 going to use those parts, but --
 04:08:54 8 THE COURT: All right. Well, it seems to me,
 04:08:56 9 then, that you should redact those parts, that is,
 04:09:00 10 essentially the pricing parts. The rest of it --
 04:09:09 11 MS. FERNANDS: With respect to the schedules,
 04:09:11 12 may I also ask with the schedules that we focused on that
 04:09:16 13 were, as you saw, only three pages that are arguably
 04:09:19 14 financial in the schedule that they pointed to, and the rest
 04:09:22 15 goes to what I'd say technical or clinical.
 04:09:29 16 THE COURT: No, I think the technical and
 04:09:38 17 clinical, I would think isn't going to make too much
 04:09:41 18 difference to a damages expert because I'm assuming he's
 04:09:46 19 probably not a whole lot better qualified than me to make
 04:09:49 20 sense of it. But I think, you know, basically the redaction
 04:10:05 21 of the exon skipping and the gene splicing, everyone agrees
 04:10:15 22 those dollars are just irrelevant. And we're not going to
 04:10:19 23 have arguments later on about whether or not you redacted
 04:10:22 24 too much, and I'd prefer to avoid that.
 04:10:25 25 I prefer to avoid having -- that it's real clear

04:10:29 1 what has been redacted. And so, basically the dollar
 04:10:36 2 figures for these things that are not the lead product or
 04:10:44 3 the gene therapy product, yeah, you can do that, but
 04:10:49 4 otherwise, you ought to give over a clean agreement.
 04:10:54 5 Okay?
 04:10:54 6 MS. FERNANDS: May I ask, and I hope this won't
 04:10:56 7 be controversial, schedule 11.6.2 is a Roche internal
 04:11:01 8 document concerning Roche compliance policies. It's a
 04:11:05 9 rather long document. It is -- I think there's -- I think
 04:11:10 10 it's listed in the -- 11.6.2 is listed in the public version
 04:11:15 11 of schedules, I think. But, Your Honor, you can see in the
 04:11:18 12 version that you have that it is a document with a Roche
 04:11:22 13 header.
 04:11:22 14 THE COURT: It's 100 percent redacted; right?
 04:11:25 15 MS. FERNANDS: It was 100 percent redacted.
 04:11:27 16 Only the title was in the public.
 04:11:28 17 THE COURT: It seems --
 04:11:34 18 MS. MORRISON: Without having seen it, it's
 04:11:35 19 difficult for me to say, but I will accept Ms. Fernands'
 04:11:40 20 representation.
 04:11:40 21 THE COURT: Well, I mean, just looking at it, I
 04:11:42 22 mean, it really is like a statement of corporate policy that
 04:11:45 23 has nothing to do with -- I think this has nothing to do
 04:11:51 24 with this contract in particular; right?
 04:11:53 25 MS. FERNANDS: That is my understanding, and it

04:11:55 1 certainly is not even my client's information. It's our
 04:11:58 2 co-development partner's information.
 04:12:00 3 THE COURT: All right. Well, I understand --
 04:12:02 4 so, you can redact that. Okay?
 04:12:08 5 All right. And I assume you'll be able to
 04:12:11 6 produce -- to do those two, the one little set of redactions
 04:12:15 7 for dollar figures and the Roche corporate policy and
 04:12:20 8 produce this, you know, like by the end of the week?
 04:12:23 9 MS. FERNANDS: Yes, we should be able to produce
 04:12:26 10 it by the end of the week, Your Honor.
 04:12:27 11 THE COURT: Okay. Well, thank you. It's an
 04:12:29 12 interesting problem you all have.
 04:12:30 13 We'll be in recess.
 04:12:32 14 DEPUTY CLERK: All rise.
 04:12:32 15 THE COURT: The transcript will serve as my
 04:12:35 16 Order.
 04:12:35 17 (Court was recessed at 4:12 p.m.)
 04:12:35 18 I hereby certify the foregoing is a true and
 04:12:35 19 accurate transcript from my stenographic notes in the
 04:12:35 20 proceeding.
 04:12:35 21 /s/ Heather M. Triozzi
 04:12:35 22 Certified Merit and Real-Time Reporter
 04:12:35 23 U.S. District Court
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 04:12:35 25

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